UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RICHARD K. LYONS,	)	
	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 02-29-B-K
	)	
LOUISIANA PACIFIC CORPORATION,	)	
	)	
	)	
Defendant	)	

MEMORANDUM OF DECISION[1]

Plaintiff Richard Lyons filed a January 20, 2002 complaint against Louisiana Pacific Corporation (hereinafter "LPC") alleging a violation of the Maine Human Rights Act, a violation of the Americans with Disabilities Act ("ADA"), a violation of the Rehabilitation Act of 1973, and a claim for intentional wrongful termination. (Docket No. 1.) Presently before the Court is LPC's motion to dismiss Count II, the ADA claim and Count IV, the intentional wrongful termination claim. I now **GRANT** defendant's motion to dismiss Count II and Count IV.

Factual Allegations

Plaintiff Lyons resides in Maine and was employed by Defendant LPC, a Delaware Corporation authorized to do business in Maine. (Compl. ¶¶ 4, 5.) LPC operates a wood processing plant in New Limerick, Maine employing more than forty employees. (Id. at 6.) Hired on September 15, 1982, as a "C" electrician, Lyons was

[1] Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

eventually promoted to "A" electrician, the most skilled level at the plant. (Id. ¶ 6.) When hired by LPC, Lyons was a qualified individual with a disability resulting from a car accident. (Id. ¶ 10.) Lyons wears a half-inch lift on his shoe because his left leg is half an inch shorter than his other leg. (Id.) LPC was aware of his condition. (Id.) During his employment at LPC, Lyons was able to perform the essential functions of his position with or without reasonable accommodations. (Id. ¶ 11.) However, he often experienced discomfort in his ankle due to the concrete flooring. (Id.) His supervisor was aware of this discomfort and although Lyons often requested rubber mats at his workstation, no reasonable accommodations were provided. (Id.)

Lyons was considered a good employee until September 26, 2000 at which time he was summarily discharged without good cause for three incidents that occurred over a thirteen-month period. (Id. ¶ 12.) After each incident, a corrective action form was placed in Lyons' personnel file, but no sessions of education or retraining were held and no accommodations for his known disability were made. (Id. ¶17.) After Lyons' supervisor learned of the third incident, he consulted with the human resource personnel and the plant manager and ultimately decided to discharge Lyons. (Id. ¶ 12.)

Rule 12(b)(6) Standard

When considering a Rule 12(b)(6) motion to dismiss, the Court must accept as true the well-pleaded factual allegations of the complaint, draw all reasonable inferences in the claimant's favor, and determine whether the complaint, when viewed in the light most favorable to the claimant, sets forth sufficient facts to support the challenged claims. Clorox Co. v. Proctor & Gamble Commercial Co., 228 F.3d 24, 30 (1st Cir. 2000);

LaChapelle v. Berkshire Life Ins. Co., 142 F.3d 507, 508 (1st Cir. 1998.) All facts are construed in the light most favorable to plaintiff, although the Court need not credit conclusory allegations or indulge unreasonably attenuated inferences. See Aybar v. Crispin-Reyes, 118 F.3d 10, 13 (1st Cir. 1997); Ticketmaster-NY, Inc. v. Alioto, 26 F.3d 201, 203 (1st Cir. 1994). A motion to dismiss should be granted only if it clearly appears that the plaintiff cannot recover on any set of facts. Gonzalez-Bernal v. United States, 907 F.2d 246, 248 (1st Cir. 1990).

Discussion

Lyons' Count II claim alleges LPC intentionally discriminated against him due to his physical or mental disability, and/or due to his record of such disability in violation of the Americans with Disabilities Act. (Compl. ¶ 30.) LPC moves to dismiss this claim due to Lyons' failure to exhaust all administrative remedies. It is well established that a plaintiff must exhaust his or her administrative remedies prior to bringing an action for violation of the ADA. See Bonilla v. Muebles J.J. Alvarez, Inc., 194 F.3d 275, 278 (1st Cir. 1999) (stating that the failure to comply with the administrative procedure specified in Title VII before commencing an action bars the courthouse doors and citing cases). The ADA requires aggrieved employees to fulfill the requirements of section 2000e of Title VII, which in part requires the plaintiff to first file a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") within 180 days following the alleged unlawful employment practice or within 300 days of the incident if the aggrieved party initially instituted proceedings with an authorized state or local agency. See Bonilla, 194 F.3d at 278 (citing 42 U.S.C. § 2000e-5(e)). Lyons' complaint does not aver nor suggest that he filed a claim with the EEOC or any agency. He reports he was

not aware of the need to exhaust administrative remedies. (Pl.'s Opp'n Mot. to Dismiss at 1.) Although there are special circumstances where noncompliance with § 2000e-5(e) can be overlooked, this is not one of those occasions. The charge-filing requirement is not a jurisdictional prerequisite; instead it is similar to a statue of limitations. See Bonilla, 194 F.3d at 278. Accordingly, the requirement is subject to various equitable exceptions. Id. (citing 42 U.S.C. § 4200e-5(e))); McKinnon v. Kwong Wah Rest., 83 F.3d 498, 505 (1st Cir. 1996)(stating that the Title VII charge-filing requirement does not invoke questions regarding the court's jurisdiction over the matter). Generally, courts should take a narrow approach to the equitable exceptions in discrimination cases. Id. at 278 (citing Rys v. United States Postal Serv., 886 F.2d 443, 446 (1st Cir. 1989)). See also Chico-Velez v. Roche Prods., Inc., 139 F.3d 56, 58 (1st Cir. 1998) (stating that equitable tolling is reserved for exceptional cases). Equitable exceptions are appropriate in instances where a plaintiff fails to file in a timely manner due to circumstances beyond the plaintiff's control. See Bonilla, 194 F.3d at 279.

In an effort to trigger an equitable exception, Lyons claims he was "involved with finding new employment and appearing before the Maine Department of Labor for unemployment benefits " and further was unaware of the charge-filing requirement. (Pl.'s Opp'n to Mot. to Dismiss at 1.) Circumstances such as these, well within the control of the claimant, do not excuse failure to comply with the Title VII requirements. Mere ignorance of a specific statutory provision containing filing requirements, without more, does not trigger an equitable exception to the charge-filing requirement. See Kale v. Combined Ins. Co of Am., 861 F.2d 746, 754 (1st Cir. 1988) ("excusable ignorance" means ignorance of statutory rights relative to discriminatory conduct due to misleading

conduct or other actions by the defendant, but it does not mean mere ignorance of a specific provision contained within the statute). As Lyons has inexcusably failed to comply with the Title VII charge-filing requirement prior to bringing the present action, his Count II ADA claim must be dismissed.

LPC moves to dismiss the Count IV claim for wrongful termination on the ground that Maine law does not recognize this claim as a cause of action. Lyons alleges LPC negligently, intentionally, and unreasonably discharged him without good cause. (Compl. ¶ 21.) His Count II claim alleges "LPC wrongfully and without just cause terminated the employment of Lyons all to his damage" and "as a direct result of said termination, Lyons has lost wages... and suffers from other non-pecuniary losses as a direct result..." (Id. ¶¶ 40-42.) He seeks lost wages and damages plus interest, costs, and attorney's fees. (Id. ¶¶ 41-42.) A motion to dismiss for failure to state a claim should be granted only if it clearly appears that the plaintiff cannot recover on any set of facts. Gonzalez-Bernal, 907 F.2d at 248. Maine law does not recognize a common law claim for wrongful termination, thus Lyons has no possibility of recovery under any facts he might be able to establish. See, e.g., Maine Bonding & Cas. Co. v. Douglas Dynamics, Inc., 594 A.2d 1079, 1080 (Me. 1991) (acknowledging that Maine does not recognize a tort of wrongful discharge); Bard v. Bath Iron Works Corp., 590 A.2d 152, 156 (Me. 1991) (stating that the Maine Supreme Court has not recognized a common law cause of action for wrongful discharge).[2]

[2] Lyons suggests that the court's decision in Bard might have been different had the complaint not also involved a claim under the Whistleblower's Protection Act or had the plaintiff not been a whistleblower. (Pls.' Opp'n to Mot. Dismiss at 1.) The court plainly stated that the plaintiff, in asserting a wrongful termination claim, ignored the fact that Maine does not recognize such a claim. See Bard, 590 A.2d at 156.

On several occasions Maine courts have rejected the opportunity to find a common law cause of action for wrongful termination. See, e.g., Bard, 590 A.2d at 156 (Me. 1991); MacDonald v. Eastern Fine Paper, Inc., 485 A.2d 228, 230 (Me. 1984) (rejecting opportunity to find whether Maine recognizes a common law action for retaliatory discharge where public policy is being contravened). In one instance only, the Maine courts observed that it had not "rule[d] out the possible recognition of such a cause of action." See Larrabee v. Penobscot Frozen Foods, Inc., 486 A.2d 97, 100 (Me. 1984). However, the possibility is limited to the narrow instance where the discharge contravenes a strong public policy. Id. Over fifteen years has passed since the Maine Supreme Court's 1984 decision in Larrabee, yet not once has the Maine court made this "possibility" a reality. Moreover, as the Bard court recognized, there is no need to recognize a redundant tort, when there is a statutory right and remedy provided, as in this case there is under the Maine Human Rights Act and the Americans with Disabilities Act.

In Maine, an employer has a common law right to discharge an employee at will, absent a contract for employment restricting this right or a clearly expressed intention by the employer that it would only discharge the employee for cause. See Bard, 590 A.2d at 155. Count IV is not a breach of employment contract claim; it alleges a cause of action that does not exist in Maine. Accordingly, Count IV should be dismissed for a failure to state a claim upon which relief may be granted.

Conclusion

Based on the foregoing, I **GRANT** LPC's motion to dismiss Count II and Count IV.

So Ordered.

Dated April 5, 2002

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Margaret J. Kravchuk
U.S. Magistrate Judge

STNDRD

U.S. District Court

District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 02-CV-29

LYONS v. LOUISIANA PACIFIC CO Filed: 02/13/02

Assigned to: MAG. JUDGE MARGARET J. KRAVCHUK ury demand: Plaintiff

Demand: $0,000 Nature of Suit: 440

Lead Docket: None Jurisdiction: Federal Question

Dkt # in Aroostook Superior : is n/a

Cause: 42:12101 American Disabilities Act

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